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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,600	01/20/2000	Evgeniy M. Getsin	IACTP014	6033

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EXAMINER	
NGUYEN, DUSTIN	
ART UNIT	**PAPER NUMBER**
2154	

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/489,600	GETSIN ET AL.	
	Examiner	Art Unit	
	Dustin Nguyen	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 19-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 19-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10/18/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-6, 19-32 are presented for examination.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-6, 19-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-32 of copending Application No. 09/488,614 [hereinafter '614 application], and claims 1-18 of copending Application No. 09/488,155 [hereinafter '155 application. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Taking claim 1 as an exemplary claim, the claims of '155 and '614 applications contain the subject matter claimed in the instant application. As per claim 1, all applications are claiming common subject matter, as follows:

A method of creating a synchronizer object ..., comprising the steps of:

receiving a request ...;

queuing the request ...;

creating an object ...; and

sending the object ....

The claims of '155 and '614 applications do not specifically disclose the invention in the same order steps as described in the claims of the instant application but it would have been obvious to a person skill in the art to recognize that the claims are similar since it would have enable to synchronously distribute information to multiple users simultaneously.

As per independent claims 22, and 30, they are also directed to the same subject matter recited in claim 1 above. Accordingly, they are provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

As per dependent claims 2-6, 19-21, 23-28, 31 and 32 of the instant application, they contain similar subject matter as dependent claims of '155 and '614 applications. Accordingly, they are provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-6, 19-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,769,130 [hereinafter as '130 patent]. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claiming common subject matter as follow:

Taking claim 1 as an exemplary claim, the '130 patent contains the subject matter claimed in the instant application. As per claim 1, both applications are claiming common subject matter, as follows:

A method of creating a synchronizer object ..., comprising the steps of:

receiving a request ...;

queuing the request ...;

creating an object ...; and

sending the object ....

The claims of '130 patent do not specifically disclose the invention in the same order steps as described in the claims of the instant application but it would have been obvious to a person skill in the art to recognize that the claims are similar since it would have enable to synchronously distribute information to multiple users simultaneously.

As per independent claims 22, 30, they are also directed to the same subject matter recited in claim 1 above. Accordingly, they are rejected under the judicially created doctrine of obviousness-type double patenting.

As per dependent claims 2-6, 19-21, 23-29, 31 and 32, they are depending on rejected claims, they are rejected under the judicially created doctrine of obviousness-type double patenting.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-6, 19, 29, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPherson et al. [US Patent No 6,591,420], in view of Sartain et al. [US Patent No 6,124,854].

7. As per claim 1, McPherson discloses the invention substantially as claimed including a method for creating a synchronizer object in order to playback an event simultaneously on a plurality of a client apparatuses, comprising the steps of:

creating an object at a host in response to the request [i.e. the program] [col 2, lines 50-54], the object adapted to playback the event on a client apparatus simultaneous with the playback of the event on the remaining client apparatuses upon the receipt of an activation signal [Figure 2; Abstract; col 1, lines 65-col 2, lines 14; and col 3, lines 1-15], wherein only the host can create the object [Figure 1; and col 4, lines 34-40]; and

sending the object to one of the client apparatuses utilizing the network for being stored therein [col 4, lines 25-32 and lines 39-40], wherein the event is not communicated over the network in real-time during the playback of the event where network bandwidth use is limited [i.e. later time] [col 2, lines 5-9].

McPherson does not specifically disclose

receiving a request utilizing a network for viewing an event;

queuing the request in memory.

Sartain discloses

receiving a request utilizing a network for viewing an event and queuing the request in memory [col 5, lines 31-51].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of McPherson and Sartain because Sartain's teaching would allow the orderly delivery of information to users according to users' requests.

8. As per claim 2, McPherson discloses the request is received via an application program embedded in a site on the network [col 4, lines 8-12].

9. As per claim 3, McPherson discloses wherein the object is adapted to playback the event which is stored in memory of the client apparatus [col 4, lines 29-33].

10. As per claim 4, McPherson discloses wherein the memory includes a digital video disc (DVD) [col 2, lines 54-55].

11. As per claim 5, McPherson discloses the object identifies a start time when the playback of the event is to begin on each of the client apparatus [col 3, lines 50-57].

12. As per claim 6, McPherson discloses the activation signal is provided using a clock of the client apparatus [col 3, lines 62-67].

13. As per claim 19, McPherson does not specifically disclose communicating overlay data over the network to the plurality of client apparatus during the playback of the event such that the overlay data is played back during the playback of the event. Sartain discloses communicating overlay data over the network to the plurality of client apparatus during the playback of the event such that the overlay data is played back during the playback of the event [col 14, lines 18-22 and lines 29-33]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of McPherson and Sartain because Sartain's teaching would allow to deliver additional valuable information to users.

14. As per claim 29, McPherson discloses generating the activation signal [i.e. control signal] [col 5, lines 23-25]; and sending the activation signal to the client apparatuses causing an initiation of playback of the event stored on the client apparatus [Abstract; and col 1, lines 65-col 2, lines 15].

15. As per claims 30 and 31, they are rejected for similar reasons as stated above in claims 1 and 29.

16. As per claim 32, it is rejected for similar reasons as stated above in claim 19.

17. Claims 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPherson et al. [US Patent No 6,591,420], in view of Sartain et al. [US Patent No 6,124,854], and further in view of Roberts et al. [US Patent No 6,161,132].

18. As per claim 20, McPherson and Sartain do not specifically disclose

determining if the request is received prior to a threshold period;

the creating an object in response to the request further comprises creating an object in response to the request if the request is received prior to the threshold period wherein the object identifies a start time when the playback of the event is to begin on each of the client apparatus; and

creating an object in response to the request when the request is received during the threshold period, wherein the object created for the request received during the threshold period is adapted to playback the event at a predefined period within the playing of the event following the start time of the event where the playback of the event is synchronized.

Roberts discloses

determining if the request is received prior to a threshold period [col 5, lines 33-37];

the creating an object in response to the request further comprises creating an object in response to the request if the request is received prior to the threshold period wherein the object identifies a start time when the playback of the event is to begin on each of the client apparatus [col 5, lines 37-42]; and

creating an object in response to the request when the request is received during the threshold period, wherein the object created for the request received during the threshold period is adapted to playback the event at a predefined period within the playing of the event following the start time of the event where the playback of the event is synchronized [i.e. seek] [col 4, lines 39-48].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of McPherson, Sartain and Roberts because Roberts' teaching would allow complementary entertainment to be meaningfully interactive for the consumer, such that the consumer can also be a creator of the experience [Roberts, col 1, lines 56-65].

19. As per claim 21, Roberts discloses the predefined period within the playing of the event comprises a predetermined chapter of the event [i.e. track] [col 4, lines 9-11].

20. As per claims 22 and 23, they are rejected for similar reasons as stated above in claims 1 and 20.

21. As per claim 24, it is rejected for similar reasons as stated above in claim 21.

22. As per claims 25 and 26, they are rejected for similar reasons as stated above in claims 2 and 3.

23. As per claim 27, it is rejected for similar reasons as stated above in claim 4.

24. As per claim 28, it is rejected for similar reasons as stated above in claim 5.

25. Applicant's arguments filed 10/29/2004 have been fully considered but they are not persuasive.

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Follansbee John can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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